

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

Implementation of Restructuring)	Docket No. 98-REN-NEW
Legislation (Public Utilities Code)	Docket No. 96-REN-1890
Sections 381, 383.5 and 445)	Notice of Substantive Changes
[AB 1890, SB 90]): Renewables)	RE: Overall Guidelines and Guidelines
)	for the New Renewable Resources
)	Account

**NOTICE OF SUBSTANTIVE CHANGES TO THE
OVERALL GUIDELINES FOR THE RENEWABLE RESOURCE TRUST FUND
AND GUIDELINES FOR THE NEW RENEWABLE RESOURCES ACCOUNT**

The Energy Commission's Business Meeting will be held:

WEDNESDAY, APRIL 3, 2002

10 a.m.

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street

Hearing Room A

Sacramento, California

(Wheelchair Accessible)

As part of its regular Business Meeting, the Energy Commission will consider a recommendation by the Commission's Environmental and Energy Infrastructure and Licensing Committee (Committee) to make substantive changes to the *Overall Guidelines for the Renewable Resources Trust Fund* (publication number P500-01-014) and the *Guidebook for the Renewable Energy Program, Volumes 2A and 2B – New Renewable Resources Account* (*Guidebook*, publication numbers P500-01-014V2A and P500-01-014V2B, respectively).

The changes are intended to identify the process by which developers of winning projects participating in the New Renewable Resources Account may apply for extension of their conditional funding awards if the projects were unable to meet the statutory deadline of December 31, 2001, for becoming operational.

Pursuant to the *Guidebook*, winning projects from the Energy Commission's first two auctions for new renewable generating facilities must come on-line (begin generating electricity) by December 31, 2001 or sooner. The *Guidebook* states: "All projects are

expected to come on-line prior to January 1, 2002. Any project failing to come on-line before this date may still be eligible to receive monthly payments, but will receive no payments for any generation beyond December 31, 2006, five years from the expected on-line date. In addition, the Energy Commission will determine whether the project should have its incentive payments reduced or canceled, or whether any other penalties should be imposed on the project, as a result of the delayed on-line date.” This on-line date requirement is based on the version of Public Utilities Code section 383.5(c)(2)(B) existing at the time the first two auctions for new renewable resources were held (June 1998 and November 2000, respectively).

In September 2000, Governor Davis signed Assembly Bill 995 into law, which amended section 383.5(c)(2)(B) by adding the following language: “Funds expended for production incentives [from the New Renewable Resources Account] shall be paid over a five-year period commencing on the date that a project begins electricity production, provided that the project shall be operational prior to January 1, 2002, unless the State Energy Resources Conservation and Development Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.”

The Committee has developed a petition process for winning project developers to follow in applying for funding award extension under this amendment. In summary, petitions must be sent to the Committee and specify the reasons for the project’s delayed on-line date, explain why the petitioner believes the delay resulted from circumstances beyond the petitioner’s control, identify the reasonable efforts taken by the petitioner to bring the project on-line by the date specified in the applicable auction solicitation, and include a revised project schedule identifying new milestone completion dates for any milestones not passed as of the date of the petition. Within 30 days of receipt of a complete petition the Committee will either issue a decision based on its consideration of the petition, or schedule a hearing to consider the petition. The Committee’s decision will contain recommendations regarding the appropriateness of a funding award extension, the length of extension, and any reductions or penalties to be imposed. The Committee’s decision and recommendations will become final when formally approved by the Commission at a regularly scheduled Business Meeting.

In addition, related guidelines changes are being proposed to clarify the process the Commission may use to cancel funding awards and to reconsidering an award cancellation. Under these proposed changes, the Committee may cancel a funding award by notifying the awardee in writing of the basis of the cancellation. This notice must be issued at least 15 days in advance of the cancellation to allow the awardee an opportunity to challenge the cancellation by filing a petition for reconsideration with the Committee. The process for filing a petition for reconsideration with the Committee, as well as the process for appealing the Committee’s decision to the

full Commission, is already set forth in the guidelines. The proposed guideline changes clarify this existing process.

Copies of the revisions in each guidebook are attached with changes shown in underline and strikeout format. Once approved by the Commission, the recommended changes will be incorporated and made available through the Commission's Web Site at <www.energy.ca.gov>. Copies will also be available from the Commission's Publications Unit by calling (916) 654-4295 and requesting publication numbers P500-01-014, P500-01-014V2A, and P500-01-014V2B, or by submitting a written request to the Publications Unit at: 1516 Ninth Street, MS-45, Sacramento, CA 95814.

Assistance

The Energy Commission's Public Adviser provides assistance to the public regarding Energy Commission procedures and participation in Energy Commission activities. Anyone wishing to obtain information on how to participate in this meeting may reach the Public Adviser's Office by phone at (916) 654-4489, toll free at (800) 822-6228, or by e-mail at [pao@energy.state.ca.us]. If you have a disability and need assistance in order to participate in this meeting, please contact Priscilla Ross at (916) 653-6631. Technical questions regarding the subject matter of this notice may be addressed to Suzanne Korosec at (916) 654-4516, or by e-mail at [skorosec@energy.state.ca.us]. News media should direct inquiries to Assistant Director Claudia Chandler at (916) 654-4989.

Date: March 22, 2002

**STATE OF CALIFORNIA ENERGY
RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION**

ROBERT A. LAURIE
Commissioner and Presiding Member
Environmental and Energy Infrastructure
and Licensing Committee

ROBERT PERNELL
Commissioner and Associate Member
Environmental and Energy Infrastructure
and Licensing Committee

Date Mailed: March 22, 2002
Mass Mail List: Master63

**PROPOSED REVISIONS TO
OVERALL GUIDELINES FOR
THE RENEWABLE RESOURCE TRUST FUND**

These guidelines were formally adopted by the California Energy Commission on January 21, 1998, pursuant to Senate Bill 90 (Chp. 905, Stats. 97), as codified in Public Utilities Code section 383.5, and subsequently revised pursuant to this authority on the following dates: March 16, 2000, September 7, 2000, October 11, 2000, and ~~May 16, 2001~~, and April 3, 2002.

7. Definitions

- a. "Awardee" - An individual or entity granted a funding award pursuant to these guidelines.
- b. "Billing Month" - The period of time coinciding with a calendar month in which an awardee is entitled to receive a payment pursuant to the awardee's funding award.
- c. "Commission" - State Energy Resources Conservation and Development Commission. Also referred to as the California Energy Commission.
- d. "Committee" – The committee of the State Energy Resources Conservation and Development Commission charged with overseeing implementation of the Renewable Energy Program; currently the Environmental and Energy Infrastructure and Licensing Electricity and Natural Gas Committee.
- e. "Funding Award" - A Commission grant of moneys from the Renewable Resources Trust Fund pursuant to these Guidelines.
- f. "Guidelines" - Renewables Resource Trust Fund Guidelines.
- g. "Registrant" - Any individual or entity that applies for and is granted registration as a renewable supplier, provider or wholesaler pursuant to these Guidelines.
- h. "Renewable Resource Trust Fund" - The fund created in the State Treasury pursuant to Public Utilities Code section 445, subdivision (a), comprised of the following accounts:
 - 1) The Existing Renewable Resources Account.
 - 2) New Renewable Resources Account.
 - 3) Emerging Renewable Resources Account.
 - 4) Customer-side Renewable Resource Purchases Account.
 - A. Customer Credit Subaccount.
 - B. Consumer Education Subaccount.
- i. "Substantive Changes" - Changes to the guidelines which affect an individual's or an entity's ability to qualify for awards made pursuant to these Guidelines from the Renewable Resource Trust Fund, or affect the payment amount of any awardee.

Chapter 2. The Existing Renewable Resources Account

1. Incorporation of Guidebook

Volume I of the Commission's guidebooks, entitled "Existing Renewable Resources Account," as adopted in January 1998, and subsequently revised, is hereby incorporated by reference and made a part of these Guidelines.

2. Application and Funding

Eligible individuals and entities interested in receiving funding awards from the Existing Renewable Resources Account shall apply to the Commission as specified in Volume I of the Commission's guidebooks.

3. Approval of Funding Awards

Funding awards made pursuant to this chapter shall be deemed approved by the Commission once the awardee has been notified in writing of the awardee's eligibility and issued a registration number. Formal Commission approval of each individual funding award shall not be required.

4. Cancellation of Funding Awards

The Committee may cancel the funding award of any awardee that changes or otherwise modifies his or her basis for eligibility under Volume I of the Commission's guidebooks and no longer satisfies the requisite eligibility criteria. ~~The Committee's decision to cancel a funding award shall be made at a publicly noticed Committee hearing.~~ The Committee shall notify the awardee in writing of ~~the Committee hearing date,~~ the basis for canceling the awardee's funding award, the effective date of the cancellation, and the terms and conditions for the repayment of any portion of the funding award the awardee was not otherwise entitled to receive. The written notice required herein shall be given at least 15 days in advance of the effective date of the cancellation to provide the awardee an opportunity to file a petition for reconsideration pursuant to Chapter 6 of these Guidelines. ~~Committee hearing date.~~ The award cancellation shall become final when formally approved by the Commission. The Commission may approve the cancellation as a consent calendar item at a regularly scheduled Business Meeting.

5. Funding Award Payments

The Commission intends to make monthly funding award payments to awardees within 60 days of the end of the billing month. Funding award payments shall not be made to an awardee in the event of any of the following:

- a. The Committee determines, pursuant to section 4 of this chapter, that the awardee is no longer eligible to receive a funding award; or
- b. The awardee fails to properly invoice the Commission's Accounting Office as specified in section 6 of this chapter; or
- c. A random audit conducted pursuant to section 7 of this chapter reveals an awardee's invoice submitted pursuant to section 6 of this chapter is overstated or otherwise unreasonable given awardee's nameplate production capacity, production history, etc.; or

Any individual or entity that applied for but was not granted a funding award or whose funding award was cancelled may petition the Committee for reconsideration in accordance with the procedures set forth in Chapter 6 of these Guidelines.

9. Disputes of Funding Award Payments

Disputes concerning the payment of any portion of a funding award made pursuant to this chapter shall be resolved in accordance with Chapter 8 of these Guidelines.

10. Record Retention

a. Awardees shall keep all records relating to and verifying the accuracy of information stated in an invoice submitted pursuant to section 6 of this chapter for a period not less than three years after the end of the calendar year in which payment for the invoice is made.

b. Awardees shall keep all records relating to and verifying the accuracy of information stated in a report submitted to the Commission pursuant to Volume 1 of the Commission's guidebooks for a period not less than three years after the end of the calendar year in which the report is submitted.

c. Awardees shall keep all records relating to and verifying the overall usage, on a total energy input basis, of all fossil fuels and non-fossil fuels used to generate electricity in a given calendar year for a period not less than four years after the end of that calendar year.

Chapter 3. New Renewable Resources Account

1. Incorporation of Guidebook

Volume 2 of the Commission's guidebooks, entitled "New Renewable Resources Account," as adopted in January 1998, and subsequently revised and augmented as Volumes 2A and 2B, is hereby incorporated by reference and made a part of these Guidelines.

2. Application and Funding

Eligible individuals and entities interested in receiving funding awards from the New Renewable Resources Account shall apply to the Commission as specified in the auction solicitations issued pursuant to Volume 2 of the Commission's guidebooks.

3. Approval of Funding Awards

Funding awards made pursuant to this chapter shall be considered for approval by the Commission upon the recommendation of the Committee. In the Committee's discretion, a publicly noticed Committee hearing may be held to review and

recommend awards for Commission approval. Prospective awardee shall be notified in writing 10 business days in advance of a Committee hearing to review and recommend funding awards. The Committee may recommend conditions that affect the receipt or the continued receipt of a funding award.

4. Cancellation or Reduction of Funding Award

The Committee may cancel the funding award, or any appropriate portion thereof, of any awardee that changes or otherwise modifies his or her basis for eligibility under Volume 2 of the Commission's guidebooks and no longer satisfies the requisite eligibility criteria, or that fails to satisfy any condition of the funding award. ~~The Committee decision to cancel a funding award, or any portion thereof, shall be made at a publicly noticed Committee hearing.~~ The Committee shall notify the awardee in writing of the ~~Committee hearing date,~~ the basis for canceling the awardee's funding award, the effective date of cancellation, and the terms and conditions for the forfeiture of any performance bond posted by the awardee or, if the awardee's facility is operational, the terms and conditions for the repayment of any portion of the funding award the awardee was not otherwise entitled to receive. The written notice required herein shall be given at least 15 days in advance of the effective date of the cancellation to provide the awardee an opportunity to file a petition for reconsideration pursuant to Chapter 6 of these Guidelines. ~~Committee hearing date.~~ The award cancellation shall become final when formally approved by the Commission. The Commission may approve the cancellation as a consent calendar item at a regularly scheduled Business Meeting.

5. Funding Award Payments

The Commission intends to make monthly funding award payments to awardees within 60 days of the end of the billing month. Funding award payments shall not be made to an awardee in the event of any of the following:

- a. The Committee determines, pursuant to section 4 of this chapter, that the awardee is no longer eligible to receive a funding award; or
- b. The awardee fails to properly invoice the Commission's Accounting Office as specified in section 6 of this chapter; or
- c. A random audit conducted pursuant to section 7 of this chapter reveals an awardee's invoice submitted pursuant to section 6 of this chapter is overstated or otherwise unreasonable given awardee's nameplate production capacity, production history, etc.; or
- d. The awardee fails to repay the Commission for any overpayment the awardee received as specified in the written notice issued pursuant to section 7 of this chapter; or
- e. Based on an investigation conducted pursuant to section 2 of ~~Chapter 8~~ Chapter 9 of these Guidelines, the Committee determines that the awardee has misstated, falsified, or misrepresented information in applying for

registration as a renewable supplier, in applying for a funding award, in invoicing for a funding award payment, or in reporting any information as required by the guidelines.

6. Funding Award Invoicing

Invoices shall be submitted to the Commission's Accounting Office as specified in Volume 2 of the Commission's guidebooks. Incomplete or illegible invoices will be returned to the awardee with a written notice stating the reasons why the invoice was rejected.

7. Random Audits

The Commission's Accounting Office or its authorized agents, in conjunction with Commission technical staff, may conduct random audits of any pending or previously submitted invoices submitted pursuant to section 6 of this chapter for the purpose of verifying the accuracy of any information included in the invoices. As part of any random audit an awardee may be required to provide the Accounting Office or its authorized agents with any and all information and records pertinent to verify the accuracy of any information included in the awardee's invoices. An awardee may also be required to open its business records for on-site inspection and audit by the Accounting Office or its authorized agents for purposes of verifying the accuracy of any information included in the invoices.

If an audit finds that an invoice has overstated an awardee's production or otherwise contains incorrect information, the Accounting Office will notify the awardee of its findings in writing within 30 days of completing the audit. If the audit is for a pending invoice, the written notice shall identify any overstated production or other incorrect information, the amount of production the awardee will be paid for, and any further action the Commission intends to pursue. If the audit is for a previously submitted invoice, the written notice shall identify the amount of any overpayment the awardee received and is obligated to repay, the terms and conditions of such repayment, and any further action the Commission intends to pursue. Further action the Commission may pursue includes, but is not limited to, additional audits or an investigation for fraud pursuant to Chapter 9 of these Guidelines.

8. Reconsideration of Funding Awards and Award Cancellations and Reductions

Any individual or entity that applied for but was not granted a funding award or whose funding award was cancelled or reduced may petition the Committee for reconsideration in accordance with the procedures set forth in Chapter 6 of these Guidelines.

9. Extension of Funding Awards

Awardees whose projects are required to be on-line by January 1, 2002, under the terms of the applicable auction solicitation, and are unable to do so because of circumstances beyond the developer's control, may petition the Committee for an

extension of their funding awards pursuant to the petition procedures specified in Chapter 7 of these Guidelines.

109.Disputes of Funding Award Payments

Disputes concerning the payment of any portion of a funding award made pursuant to this chapter shall be resolved in accordance with ~~Chapter 7~~Chapter 8 of these Guidelines.

1140.Subsequent Auctions

The Commission, upon the recommendation of the Committee, may authorize subsequent auctions to encumber funds in the New Renewable Resources Account not otherwise allocated through prior auctions, to encumber funds that have reverted back to the New Renewable Resources Account due to canceled or reduced funding awards, or to encumber funds the Commission has reallocated to the New Renewable Resources Account from other accounts in the Renewable Resource Trust Fund. The Committee's recommendation for subsequent auctions shall be based on available funding, market conditions and the results of prior auctions. The Committee's recommendation may specify the schedule for conducting any subsequent auctions and the eligibility criteria for participating in the auctions. The eligibility criteria for subsequent auctions shall comport with the eligibility criteria specified in Volume 2 of the Commission's guidebooks.

1214. Record Retention

- a. Awardees shall keep all records relating to and verifying the accuracy of information stated in an invoice submitted pursuant to section 6 of this chapter for a period not less than three years after the end of the calendar year in which payment for the invoice is made.
- b. Awardees shall keep all records relating to and verifying the accuracy of information stated in a report submitted to the Commission pursuant to Volume 2 of the Commission's guidebooks for a period not less than three years after the end of the calendar year in which the report is submitted.
- c. Awardees shall keep all records relating to and verifying the overall usage, on a total energy input basis, of all fossil fuels and non-fossil fuels used to generate electricity in a given calendar year for a period not less than four years after the end of that calendar year.

Chapter 5. Customer-side Renewable Resource Purchases Account

A. Customer Credit Subaccount

1. Incorporation of Guidebook

Volume 4 of the Commission's guidebooks, entitled "Customer Credit Subaccount," as adopted in January 1998, and subsequently revised, is hereby incorporated by reference and made a part of these Guidelines.

2. Application and Funding

Eligible individuals and entities interested in receiving funding awards from the Customer Credit Subaccount shall apply to the Commission as specified in Volume 4 of the Commission's guidebooks.

3. Approval of Funding Awards

Funding awards made pursuant to this chapter shall be deemed approved by the Commission once the awardee has been notified in writing of the awardee's eligibility and issued a registration number. Formal Commission approval of each individual funding award shall not be required.

4. Cancellation of Funding Awards

The Committee shall cancel the funding award of any awardee that changes or otherwise modifies his or her basis for eligibility under Volume 4 of the Commission's guidebooks and no longer satisfies the requisite eligibility criteria. ~~The Committee's decision to cancel a funding award shall be made at a publicly noticed Committee hearing.~~ The Committee shall notify the awardee in writing of the ~~Committee hearing date~~, the basis for canceling the awardee's funding award, the effective date of the cancellation, and the terms and conditions for the repayment of any portion of the funding award the awardee was not otherwise entitled to receive. The written notice required herein shall be given at least 15 days in advance of the effective date of the cancellation to provide the awardee an opportunity to file a petition for reconsideration pursuant to Chapter 6 of these Guidelines. ~~Committee hearing date~~ The award cancellation shall become final when formally approved by the Commission. The Commission may approve the cancellation as a consent calendar item at a regularly scheduled Business Meeting.

3. Approval of Funding Awards

Funding awards made pursuant to this Chapter 5.B. shall be approved by the Commission and the Committee as specified in Volume 5 of the Commission's guidebooks.

4. Cancellation or Reduction of Funding Awards

The Committee may cancel the funding award, or any appropriate portion thereof, of any awardee that changes or otherwise modifies the basis for his or her award eligibility under Volume 5 of the Commission's guidebooks or any pertinent solicitation issued thereunder, or that fails to satisfy any condition of the funding award. ~~The Committee's decision to cancel a funding award, or portion thereof, shall be made at a publicly noticed Committee hearing.~~ The Committee shall notify the awardee in writing of ~~the Committee hearing date,~~ the basis for canceling the awardee's funding award, or any portion thereof, the effective date of cancellation, and the terms and conditions for the repayment of any portion of the funding award the awardee was not otherwise entitled to receive. The written notice required herein shall be given at least 15 days in advance of the effective date of the cancellation to provide the awardee an opportunity to file a petition for reconsideration pursuant to Chapter 6 of these Guidelines. ~~the Committee hearing date.~~ The award cancellation shall become final when formally approved by the Commission. The Commission may approve the cancellation as a consent calendar item at a regularly scheduled Business Meeting.

5. Funding Award Payments

Funding award payments shall be made as specified in Volume 5 of the Commission's guidebooks and any pertinent solicitations issued thereunder. Funding award payments shall not be made to an awardee in the event of any of the following:

- a. The Committee determines, pursuant to section 4 of this Chapter 5.B., that the awardee is no longer eligible to receive a funding award or portion thereof; or
- b. The awardee fails to properly invoice the Commission as specified in section 6 of this Chapter 5.B.; or
- c. A random audit conducted pursuant to section 7 of this Chapter 5.B. reveals the awardee's program or project, or portions thereof, was not completed as specified by the invoice or supporting documentation submitted pursuant to section 6 of this Chapter 5.B.; or
- d. The awardee fails to repay the Commission for any overpayment the awardee received as specified in the written notice issued pursuant to section 7 of this Chapter 5.B.; or
- e. Based on an investigation conducted pursuant to section 2 of ~~Chapter 8~~ Chapter 9 of these Guidelines, the Committee determines that the awardee

9. Disputes of Funding Award Payments

Disputes concerning the payment of any portion of a funding award made pursuant to this Chapter 5.B. shall be resolved in accordance with Chapter 8 of these Guidelines.

10. Record Retention

Awardees shall keep all records relating to and verifying the accuracy of information stated in any invoice submitted pursuant to section 6 of this Chapter 5.B. for a period not less than three years after the end of the calendar year in which payment for the invoice is made.

Chapter 6. Reconsideration of Funding Awards, Funding Award Cancellations, and Registration

1. Committee Reconsideration

Any individual or entity that applied for but was not granted a funding award, whose funding award was cancelled or reduced, that applied for but was not granted registration as a renewable supplier, provider or wholesaler, or whose registration was revoked may petition the Committee for reconsideration. The petition for reconsideration shall be in writing and shall be submitted, together with any supporting documentation, to the Committee at the following address within 15 days of receipt of the notice of funding award denial, cancellation, reduction, or registration denial or revocation.

Address: California Energy Commission
Environmental and Energy Infrastructure and Licensing Electricity
~~and Natural Gas Committee~~
1516 9th Street, MS-3445
Sacramento, CA 95814-5512

The petition shall specify the basis upon which the appeal is made, explain why the petitioner believes the funding award denial, cancellation, reduction, or registration denial or revocation is improper given the eligibility criteria for the funding award or registration, explain any supporting documentation filed with the petition, identify any legal authority or other basis supporting the petitioner's position, and identify the remedy sought.

Within 30 days of receipt of a complete petition the Committee, in its discretion, shall either issue a decision based on its consideration of the petition and the written response of Commission staff, or schedule a hearing to consider the petition. If a hearing is scheduled the petitioner shall be notified of the hearing date and any additional information the petitioner is directed to submit. This notice shall be given at least 15 days in advance of the Committee hearing date. The

Committee may direct the petitioner and Commission staff to attend the Committee hearing to offer pertinent testimony.

The Committee shall provide the petitioner with a written decision on the petition within 30 days of holding the hearing. Should the petitioner disagree with the Committee's decision the petitioner may appeal the decision to the Commission pursuant to section 2 of this chapter.

2. Commission Appeals

Within 15 days of receipt of the Committee's decision, the appealing party shall file a letter of appeal ~~stating indicating~~ why the Committee's decision is unacceptable. The letter of appeal, along with a copy of the petition for reconsideration, supporting documentation, and the Committee's written decision, shall be sent to the Commission's Public Adviser at the following address.

Address: California Energy Commission
Public Adviser's Office
1516 9th Street, MS-12
Sacramento, CA 95814-5512

Within 15 days of receipt of the letter of appeal, the Public Adviser shall arrange for the appeal to be presented to the Commission at a regularly scheduled Business Meeting, and shall inform the appealing party in writing of the Business Meeting date and the procedures for participating in the Business Meeting. The appealing party shall be responsible for presenting the appeal to the Commission during the Business Meeting. Unless the Commission determines otherwise during the course of the Business Meeting, a determination on the appeal shall be rendered during the Business Meeting.

Chapter 7. Extension of Funding Awards under the New Renewable Resources Account

1. Committee Petition

Awardees whose projects are required to be on-line by January 1, 2002 under the terms of the applicable auction solicitation, and are unable to do so because of circumstances beyond the developer's control, may petition the Committee for an extension of their funding awards pursuant to Public Utilities Code section 383.5(c)(2)(B).

The petition for a funding award extension shall be in writing and shall be submitted, together with any supporting documentation, to the Committee at the following address.

Address: California Energy Commission
Environmental and Energy Infrastructure Committee
1516 9th Street, MS-45
Sacramento, CA 95814-5512

The petition shall specify the reasons for the project's delayed on-line date, explain why the petitioner believes the delay resulted from circumstances beyond the petitioner's control, identify the reasonable efforts taken by the petitioner to bring the project on-line by the date specified in the applicable auction solicitation, identify the additional time needed to bring the project on-line, explain why this additional time is justified given the petitioner's circumstances, explain any supporting documentation filed with the petition, and identify any legal authority or other basis supporting the petitioner's position. The petition must also include a revised project schedule identifying new milestone completion dates for any milestones not passed as of the date of the petition.

Within 30 days of receipt of a complete petition the Committee, at its discretion, shall either issue a decision based on its consideration of the petition, or schedule a hearing to consider the petition. If a hearing is scheduled the petitioner and any other interested parties shall be notified of the hearing date and any additional information the petitioner is directed to submit. This notice shall be given at least 15 days in advance of the Committee hearing date. The Committee may direct the petitioner and Commission staff to attend the Committee hearing to offer pertinent testimony. At the Committee's discretion, a single hearing may be held to consider one or more petitions.

If a hearing is held, the Committee shall provide the petitioner and all other interested parties with a written decision on the petition within 30 days of holding the hearing.

The Committee will determine whether the petitioner used reasonable efforts to bring the project on-line by the date specified in the applicable auction solicitation, and whether there were circumstances beyond the petitioner's control that prevented the petitioner from bringing the project on-line by that date. The Committee's decision will also make recommendations regarding whether a funding award extension is appropriate, and if so, the length of the extension, and whether the funding award should be reduced or penalized, and if so, the amount or percentage of the reduction or penalty. The Committee's recommendations regarding the length of any funding award extension and the amount of any funding award reduction and penalty shall comport with the funding award extension and reduction criteria specified in Guidebook Volume 2 and the applicable auction solicitation. The recommended funding award reduction or penalty shall not be less than the funding award reduction or penalty specified in Guidebook Volume 2 or the applicable auction solicitation. The Committee's decision and recommendations shall become final when formally approved by the Commission. The Commission may approve the Committee's decision and recommendations as a consent calendar item at a regularly scheduled Business Meeting.

Should the petitioner and/or other parties disagree with the Committee's decision the petitioner and/or other parties may appeal the decision to the Commission pursuant to section 2 of this chapter.

2. Commission Appeals

Within 15 days of receipt of the Committee's decision, the appealing party shall file a letter of appeal stating why the Committee's decision is unacceptable. The letter of appeal, along with a copy of the petition for funding award extension, supporting documentation, and the Committee's written decision, shall be sent to the Commission's Public Adviser at the following address.

Address: California Energy Commission
Public Adviser's Office
1516 9th Street, MS-12
Sacramento, CA 95814-5512

Within 15 days of receipt of the letter of appeal, the Public Adviser shall arrange for the appeal to be presented to the Commission at a regularly scheduled Business Meeting, and shall inform the appealing party in writing of the Business Meeting date and the procedures for participating in the Business Meeting. The appealing party shall be responsible for presenting the appeal to the Commission during the Business Meeting. Unless the Commission determines otherwise during the course of the Business Meeting, a determination on the appeal shall be rendered during the Business Meeting.

~~Chapter 7~~Chapter 8. Disputes of Funding Award Payments

1. Accounting Office Review

Within 15 days of receipt of a payment, the amount of which is disputed, or a notice from the Commission's Accounting Office indicating no payment will be made, the awardee must file a written dispute claim, together with any evidence supporting the awardee's position, to the Commission's Accounting Office at the following address.

Address: California Energy Commission
Accounting Office
1516 9th Street, MS-2
Sacramento, CA 95814-5512

The claim shall identify the payment in dispute, the date on which payment was received or expected, an explanation of the evidence supporting the awardee's position, any legal authority or other basis supporting the awardee's position, and the amount of repayment sought. The Accounting Office will review the claim within 15 days of its receipt, determine its validity, and provide the awardee with a written decision supported by reasons. The written decision shall specify that portion of the claim, if any, determined to be valid, and the amount and date when

repayment will be made. Should the awardee disagree with the determination of the Accounting Office the awardee may seek reconsideration pursuant to section 2 of this chapter.

2. Executive Office Review

Within 15 days of receipt of a written decision from the Accounting Office the awardee must prepare a letter of reconsideration stating ~~indicating~~ why the written decision is unacceptable. The awardee shall send this letter, along with a copy of the original dispute claim, supporting documents, and the Accounting Office's written decision, to the Commission's Executive Director at the following address.

Address: California Energy Commission
Office of the Executive Director
1516 9th Street, MS-39
Sacramento, CA 95814-5512

The Executive Director, or his or her designee, will review the letter of reconsideration within 30 days of its receipt, assess the Accounting Office's written decision, and provide the awardee with a written decision. The written decision shall specify whether the Accounting Office's determination shall be upheld, whether any portion of the awardee's original dispute claim is deemed valid, and the amount and date that any repayment will be made. Should the awardee disagree with the Executive Director's determination the awardee may appeal the determination to the Commission pursuant to section 3 of this chapter.

3. Commission Appeal

Within 15 day of receipt of the Executive Director's written determination, the awardee shall file a letter of appeal stating ~~indicating~~ why the Executive Director's written decision is unacceptable. The letter of appeal, along with a copy of the original dispute claim, supporting documents, and the Accounting Office and Executive Director decisions, shall be sent to the Commission's Public Adviser at the following address.

Address: California Energy Commission
Public Adviser's Office
1516 9th Street, MS-12
Sacramento, CA 95814-5512

Within 15 days of receipt of the written appeal the Public Adviser shall arrange for the appeal to be presented to the Commission at a regularly scheduled Business Meeting, and shall inform the awardee in writing of the Business Meeting date and the procedures for participating in the Business Meeting. The awardee shall be responsible for presenting the appeal to the Commission during the Business Meeting. Unless the Commission decides otherwise during the course of the Business Meeting, a determination on the awardee's appeal shall be rendered during the Business Meeting.

**PROPOSED REVISIONS TO
GUIDEBOOK FOR
THE RENEWABLE ENERGY PROGRAM**

**VOLUME 2A
NEW RENEWABLE RESOURCES ACCOUNT**

These guidelines were formally adopted as Guidebook Volume 2 by the California Energy Commission on January 21, 1998, and subsequently revised on February 18, 1998, October 11, 2000, and May 16, 2001, and April 3, 2002, pursuant to Senate Bill 90 (Ch. 905, Stats. 97). These guidelines are now referred to as Guidebook Volume 2A.

This Guidebook Volume 2A contains general information on how to qualify and apply for funding from the New Renewable Resources Account of the Renewable Resource Trust Fund. For more detailed information on this and other accounts funded through the Renewable Resource Trust Fund, please see the Energy Commission's *Policy Report on AB 1890 Renewables Funding*. The report (Publication Number P500-97-002) may be obtained through the California Energy Commission's Publications Office at (916) 654-5200

A missed milestone may result in performance bonds, penalties, incentive payment forfeiture, or secondary milestones being imposed on the project. To address these performance issues, more specific terms will be included in the applicable Notice of Auction or a project award package or funding award. The Energy Commission reserves the right to terminate a project award and status as winner of an auction if a milestone is missed.

Milestone #1: Project Award Package Adoption (First Auction)

This section applies to winners of the first auction. Project Award Packages will not be prepared for winners of subsequent the second-auctions. Instead, funding awards will be prepared for winners of subsequent the second-auctions as specified in the applicable Notice of Auction.¹⁹

The first milestone for all projects will be the preparation and adoption of a project award package. The project award package will include, but not be limited to: documentation of the project's status as an auction winner, documentation of a project's eligibility to receive payments from the New Technologies Account, documentation of the project's understanding of permitting requirements and regulatory requirements after operation (such as hazardous materials handling), a listing and schedule of applicable milestones for the project prior to payment, and a tabulation of the expected schedule and amounts of payment from the New Technologies Account. **A sample set of documents expected to be included in the project award package will be provided with the Notice of Auction.**

Adoption of a project award package will effectively encumber the expected total payments to a project, subject to completion of milestones, generation of eligible kilowatt-hours, and any applicable penalties. Projects whose project award package has been adopted will have one half (1/2) of their bid bonds returned or cleared within two months. The remaining one half (1/2) of their bid bonds will be returned or cleared within two months of Energy Commission certification of passage of Milestone #2.

The Energy Commission believes that a typical project award package can be adopted within three months of the announcement of results from the auction. However, the Energy Commission recognizes that this time can vary significantly; those whose eligibility to receive payments from the New Technologies Account was clear prior to the auction will be able to prepare award packages sooner than those who must take actions to ensure payment eligibility after the auction. For example, winning bidders with existing S02, IS04, or similar negotiated utility contracts must terminate those contracts to be eligible to receive payments. The Energy Commission will not adopt a project award package for a project unless payment eligibility is assured. In all cases, however, winning projects must have their project award packages adopted within one year of the date of the auction.

¹⁹The elements of a funding award under subsequent the second-auctions will be similar to the elements of a Project Award Package under the first auction.

Quarterly Reports

Unless indicated otherwise in the applicable Notice of Auction, winning projects will be expected to submit quarterly reports to the Energy Commission describing the project's progress towards coming on-line. These quarterly reports will be due at the end of each calendar quarter, beginning in the first quarter after the auction date and ending in the first quarter that the project begins receiving incentive payments. The quarterly reports should document any progress to date (milestones passed), any progress towards the next applicable milestone, any problems compromising progress towards the next applicable milestone, proposed resolution of those problems, any changes in the project status or description, any violations of program requirements that have occurred, and any expected or requested changes in schedule.

Coming On-line

All projects are expected to come on-line by the date specified in the applicable Notice of Auction.

First Auction, Notice of Auction (NOA) 500-97-506:

Projects under the Energy Commission's first auction, NOA 500-97-506, are expected to come on-line prior to January 1, 2002. This on-line date requirement is based on the 1998 version of Public Utilities Code section 383.5(c)(2)(B), which authorized funding award payments for five years provided a project was operational prior to January 1, 2002. Based on this requirement, NOA 500-98-506 states: "Winning projects are expected to come on-line as an eligible renewable generator prior to January 1, 2002; those who come on-line later than this date may have their awards terminated by the Commission, and in no case will they receive incentive payments for generation after December 31, 2006."

In addition, the *Guidebook for the Renewable Energy Program, Volume 2B, New Renewable Resources Account – Implementation of Auction Results*²² states, "All projects are expected to come on-line prior to January 1, 2002. Any project failing to come on-line before this date may still be eligible to receive monthly payments, but will receive no payments for any generation beyond December 31, 2006, five years from the expected on-line date. In addition, the Commission will determine whether the project should have its incentive payments reduced or canceled, or whether any other penalties should be imposed on the project, as a result of the delayed on-line date."

In September 2000, Public Utilities Code section 383.5(c)(2)(B) was amended to allow funding award payments to be made for five years even though a project was not on-line by January 1, 2002, if the Energy Commission determined that the project's delayed on-line date was the result of circumstances beyond the developer's control. Pursuant to this amendment, projects under the first auction that were unable to come

²²Publication No. P500-01-014V2B.

on-line by January 1, 2002, may petition for an extension of their funding awards in the manner specified in the Commission's *Overall Guidelines for the Renewable Resource Trust Fund*, but are subject to further award reductions and penalties for coming on-line late.

Second Auction, NOA 500-00-504:

Projects under the Energy Commission's second auction, NOA 500-00-504, were also expected to come on-line by January 1, 2002. However, the second auction was designed primarily to encourage projects to be developed by the summer of 2001 to help with California's projected shortage of electricity supplies. Toward that end, NOA 500-00-504 specified a system of bonuses and penalties based on a project's on-line date as shown below:

<u>Project On-line Date</u>	<u>Percentage of Award</u>
<u>Prior to or on June 1, 2001</u>	<u>110 Percent</u>
<u>June 2 to July 1, 2001</u>	<u>100 Percent</u>
<u>July 2 to August 1, 2001</u>	<u>90 Percent</u>
<u>August 2 to December 31, 2001</u>	<u>80 Percent</u>
<u>January 1, 2002 and beyond</u>	<u>Award may be terminated or further reduced</u>

As shown in the table, projects that came on-line on or before June 1, 2001, received a 10 percent bonus, while projects that had not come on-line by January 1, 2002, may be subject to further award reductions or termination.

Projects under the second auction that were unable to come on-line by January 1, 2002, may also petition for an extension of their funding awards as specified in the *Overall Guidelines for the Renewable Resource Trust Fund*, but are subject to further award reductions and penalties as specified below. While projects under the second auction participated with the understanding that their primary value was in coming on-line quickly, ideally by summer 2001, the Commission recognizes that there have been a number of unforeseen occurrences affecting California's electricity market during the period in which these projects were being developed. Therefore, projects under the second auction that were unable to come on-line by January 1, 2002, as a result of circumstances beyond the developer's control will be subject to the revised schedule of penalties shown below. In addition, no payments will be made to these projects for any generation beyond July 2, 2008.

<u>PENALTIES FOR WINNING PROJECTS IN NOTICE OF AUCTION 500-00-504</u>	
<u>Project On-line Date</u>	<u>Percentage of Award</u>
<u>January 1 to September 1, 2002</u>	<u>80 Percent</u>
<u>September 2 to December 31, 2002</u>	<u>70 Percent</u>
<u>January 1, 2003 to April 1, 2003</u>	<u>60 Percent</u>
<u>April 2, 2003 to July 1, 2003</u>	<u>50 Percent</u>
<u>July 2, 2003 and beyond</u>	<u>Award may be further reduced or terminated.</u>

Third Auction, NOA 6-01-3:

The Commission's third auction, NOA 6-01-3, was conducted in mid-2001 and was intended to solicit renewable projects that could be on line by summer 2002 (well after the January 1, 2002, on-line date identified in Public Utilities Code section 383.5(c)(2)(B)). Therefore, the Commission has determined that the timing of the auction in itself constitutes circumstances beyond the project developer's control for purposes of extending the funding awards of any projects that are not on-line by January 1, 2002. These funding awards will be automatically extended and subject to the bonuses and penalties shown in the table below. In addition, no payments will be made to these projects for any generation beyond July 2, 2008.

<u>PENALTIES FOR WINNING PROJECTS IN NOTICE OF AUCTION 6-01-3</u>	
<u>Project On-line Date</u>	<u>Percentage of Award</u>
<u>Prior to or on June 1, 2002</u>	<u>110 Percent</u>
<u>June 2 to July 1, 2002</u>	<u>100 Percent</u>
<u>July 2 to August 1, 2002</u>	<u>90 Percent</u>
<u>August 2 to September 1, 2002</u>	<u>80 Percent</u>
<u>September 2 to December 31, 2002</u>	<u>70 Percent</u>
<u>January 1, 2003 to April 1, 2003</u>	<u>60 Percent</u>
<u>April 2, 2003 to July 1, 2003</u>	<u>50 Percent</u>
<u>July 2, 2003 and beyond</u>	<u>Award may be further reduced or terminated.</u>

After A Project Comes On-line

~~All projects are expected to come on line by the date specified in the applicable Notice of Auction. Any project failing to come on line by this date may have their award reduced or terminated by the Energy Commission.~~

To receive incentive payments, on-line projects must submit monthly invoices identifying the amount of eligible power generated from the project. The monthly invoice shall consist of a completed and properly executed CEC-189OB-3 form, a copy of which is included with this guidebook, or its replacement at the time, together with an attached invoice or written statement of an independent third party verifying the project's eligible power generation for the billing month. The third party may be a utility, the Independent System Operator created pursuant to section 330 of the Public Utilities Code, an aggregator, or other similar entity which is independent of the project and gathers data on the amount of electricity production supplied by the project to the transmission grid or distribution system on a monthly basis. If the independent third party's statement is not received in time to submit it with your invoice, you are expected to submit your invoice with other evidence of the amount of eligible power generated during the billing month. A letter explaining why the third party's statement could not be submitted and describing the evidence submitted in its place must also be submitted with the invoice. The Commission's Accounting Office will evaluate these invoices on a case-by-case basis and notify the submitting party whether the amount claimed in the

**PROPOSED REVISIONS TO
GUIDEBOOK FOR
THE RENEWABLE ENERGY PROGRAM**

**VOLUME 2B
NEW RENEWABLE RESOURCES ACCOUNT**

This Volume 2B augments the *Guidebook for the Renewable Energy Program, Volume 2 – New Renewable Resources Account*, initially adopted by the California Energy Commission on January 21, 1998, pursuant to Senate Bill 90 (Chapter 905, Statutes 1997), and subsequently revised as Volume 2A. This volume was formally adopted on December 16, 1998, and subsequently revised on February 19, 1999, September 7, 2000, and April 3, 2002. This volume is based, in part, on the March 1998 *Notice of Auction (NOA) No. 500-97-506, Guidebook Volume 2*, and Chapter 3 of the *Overall Guidelines for the Renewable Resource Trust Fund*. For more detailed information on this and other accounts funded through the Renewable Resource Trust Fund, please see the Energy Commission's *Policy Report on AB 1890 Renewables Funding*, Publication No. P500-97-002. All Energy Commission reports may be obtained through the California Energy Commission's Publications Office at (916) 654-5200, and on the Energy Commission's Web Site at: www.energy.ca.gov.

Preface

The initial guidebook for the New Renewable Resources Account was formally adopted by the California Energy Commission on January 21, 1998, pursuant to Senate Bill 90 (Chapter 905, Statutes 1997).

This volume updates and replaces *Volume 2 – New Renewable Resources Account* of the guidebook. It was formally adopted on December 16, 1998, and subsequently revised on February 19, 1999, and September 7, 2000. It differs from the original Volume 2 by (1) providing more specific instructions for completing Quarterly reports, Project Award Packages (PAPs) (Milestone 1), and Milestones 2 through 6 for new renewable energy producers who successfully bid in the New Renewable Resources Account auction of the Renewable Resource Trust Fund and by (2) omitting instructions for participation in the Auction, which was held on June 5, 1998. This volume is based, in part, on the March 1998 *Notice of Auction* (NOA) No. 500-97-506, Amended May 11, 1998, (AD-1) and May 28, 1998 (AD-2); the *Guidebook for the Renewable Technology Program, Volume 2 – New Renewable Resources Account*, Publication No. P500-97-011V2, and Chapter 3 of the *Overall Guidelines for the Renewable Resource Trust Fund*, Publication No. P500-97-012. For more detailed information on this and other accounts funded through the Renewable Resource Trust Fund, please see the Energy Commission's *Policy Report on AB 1890 Renewables Funding*, Publication No. P500-97-002. All Energy Commission reports may be obtained through the California Energy Commission's Publications Office at (916) 654-5200, and on the Energy Commission's Web Site at: <www.energy.ca.gov>.

Introduction

This volume updates and replaces the *Guidebook for the Renewable Energy Program, Volume 2 – New Renewable Resources Account*. It differs from the original Volume 2 by (1) providing more specific instructions for completing reports for energy producers who successfully bid in the New Renewable Resources Account Notice of Auction 500-98-506 and (2) omitting instructions for participation in the that Auction, which was held on June 5, 1998.

Assembly Bill 1890 (AB 1890), enacted on September 23, 1996, provides \$540 million for the support of renewable electricity generation technologies. These funds will be collected from the ratepayers of the three largest investor-owned utilities in California from 1998 through March 31, 2002, to support existing, new, and emerging renewable electricity generation technologies. As part of the requirements of AB 1890, the California Energy Commission (Commission) submitted a Policy Report¹ to the Legislature with recommendations for allocating the \$540 million.

¹ *Policy Report on AB 1890 Renewables Funding*, published March 1997, publication number 500-97-002.

Senate Bill 90 (SB 90), enacted on October 12, 1997, establishes the **Renewable Resource Trust Fund**, and contains explicit directions for distributing this fund through four distinct accounts: Existing Renewable Resources Account, New Renewable Resources Account, Emerging Renewable Resources Account, and Customer-Side Renewable Resource Purchases Account. Table 1 shows the percentage funding allocations by year.

Table 1
Yearly Allocations to Renewable Technologies²

Account	1998	1999	2000	2001	Overall	(in millions)
Existing Technologies	57%	49%	41%	33%	45%	\$243
New Technologies	24%	28%	32%	36%	30%	\$162
Emerging Technologies	10%	10%	10%	10%	10%	\$54
Customer-Side	9%	13%	17%	21%	15%	\$81

To assist potential participants in the Renewable Energy Program in applying for funding from the various accounts within the program, the Commission developed account-specific *Guidebooks*. These *Guidebooks* are identified as Volumes 1 through 5, with each volume corresponding to an account in the **Renewable Resource Trust Fund**:

- Volume 1 – Existing Renewable Resources Account
- Volume 2 – New Renewable Resources Account
- Volume 3 – Emerging Renewable Resources Account
- Volume 4 – Customer Credit Subaccount of the Customer-Side Renewable Resource Purchases Account
- Volume 5 – Consumer Education Subaccount of the Customer-Side Renewable Resources Purchases Account

This volume, Volume 2B, is intended to augment as an update of Volume 2. It provides specific instructions for completing Quarterly reports, Project Award Packages (Milestone 1), and Milestones 2 through 6 for new renewable energy producers who successfully bid in the June 1998 New Renewable Resources Account auction (Notice of Auction 500-98-506) of the Renewable Resource Trust Fund. References hereinafter to “Committee” shall refer to the Commission committee charged with overseeing the Renewable Energy Program, currently the Environmental and Energy Infrastructure and Licensing Electricity and Natural Gas Committee.

²These percentages apply to \$135 million dollars annually for four years as assumed in the **Policy Report on AB 1890 Renewables Funding**. Due to the fact that \$135 million will not be collected in the early years, it may be necessary to borrow some funds from one account in order to make payments in another account equal to the absolute amounts expected annually. This will only be done if the account from which money is being borrowed is not adversely affected. All funds borrowed will be returned to their appropriate account.

Overview Of The New Renewable Resources Account

Project proponents in the New Renewable Resources Account competed for the \$162 million allocated funds by submitting bids on June 5, 1998, in an auction to receive a fixed, generation-based production incentive. Eligible bids in the auction were ranked from lowest cents per kilowatt-hour incentive request to highest. Beginning with the lowest request, eligible bids were accepted until funds were fully allocated. Auction winners were notified in writing on July 10, 1998, that their projects had been accepted as eligible for funding.

Winners must receive approval of their Project Award Package from the Commission (Milestone 1), pass post-auction permitting and construction milestones, submit quarterly reports, and begin operating as an eligible renewable generator prior to receiving any incentive payments. These milestones and reports will help Commission staff track the progress of projects and identify those that may have difficulty becoming operational. Individual project schedules or milestones may vary depending on the site location or the technology involved.

After coming on-line, project proponents submit monthly invoices to the Commission documenting the sale of their generation during the first five applicable years of operation after a project is developed. Winning projects are expected to come on-line as an eligible renewable generator prior to January 1, 2002; those that come on-line after that date may have their awards reduced or terminated by the Commission.³ This on-line date requirement is based on the version of Public Utilities Code section 383.5(c)(2)(B) existing at the time the June 1998 auction was held. In no case will they receive incentive payments for generation beyond December 31, 2006.

Project Award Packages

The first milestone for all projects is the preparation and adoption of a Project Award Package (PAP). Winning bidders and Commission staff will work together to develop a PAP for each winning project. The PAP will document the winning project's eligibility and status as auction winner; describe any changes to the bid proposed; provide a detailed description of the project site location; identify all necessary project permits, financial information and pertinent project characteristics; and outline applicable milestones and expected project schedule(s). A Funding Award Agreement, prepared by Commission staff, will be issued after the PAP is submitted and reviewed, and a copy will be included in the final PAP. The Funding Award Agreement will include the

³Projects that include a fossil-fuel component will not be considered to be on-line as an eligible renewable generator until they meet the requirement of using no more than 25 percent fossil fuel in their operation. The content of all fossil fuels used, in the aggregate, may not exceed 25 percent of the total energy input of the facility during a given calendar year consistent with Title 18 of CFR, Section 292.204[b]. Winning projects that were on-line prior to receiving their award will submit invoices and receive incentive payments during the first five years after receiving the award.

project. These changes must be approved in writing by the Commission staff before the project can proceed. Examples of such changes are: sale of project; change in technology; increase in the amount of fossil-fuel use; increase or decrease in capacity or expected energy generated; changes in contract renegotiations affecting the project's ability to repower (if applicable); change in project location; and schedule changes such that milestone dates differ more than three months from those outlined in the PAP.

The project manager and the Committee will review the proposed changes and determine an appropriate response. The project proponent will be notified in writing of the project manager's/Committee's decision; if changes are not approved, that notification may include recommended penalties and/or award termination if the project proponent proceeds with the changes.

Changes that do not materially affect the incentive program's operation, such as a change in contact person, project name, or minor changes in permit requirements from those identified in the PAP, do not need to be approved in advance if they do not affect project milestone dates **by more than three months**. However, the Commission project manager must still be notified of these changes in the Quarterly reports or by separate written communication where appropriate.

Milestones 2 Through 6: Project Status Checkpoints

Each project proponent should notify the Commission in writing, in Quarterly reports or otherwise, as each milestone (detailed in the PAP) is met. Projects will not be certified by the Commission to have passed a particular milestone until they also pass the previous milestones, however two or more milestones may be passed at the same time. The Commission may verify milestone completion through requests for detailed backup, audits, on-site visits or other methods as required. A milestone will not be considered passed by the Commission without written notification by the project proponent and potential verification by the Commission staff. Note that the milestone descriptions in Table 2 help to define when a milestone is completed. For example, Milestone 4 is not complete until foundation and piling work begins, or major equipment is delivered to the site.

If a project proponent expects to meet a milestone on a date different from the one given in the PAP, the project proponent must notify the Commission in writing and provide the new expected date for achieving the milestone as well as any other revisions to subsequent milestone dates that may be needed. The Commission will determine whether any additional milestones or any penalties should be imposed on the project as a result of the delayed milestone. The Committee will hold publicly noticed hearings to make determinations on such matters pursuant to the Commission's Overall Guidelines for the Renewable Resources Trust Fund (Publication No. P500-97-012) (publication number P500-01-014).

Code, Section 6109. This form must be on file with the Commission in order for any payments to be made. If you have any questions about this form, please contact the California Franchise Tax Board at 1-800-852-5711. The required forms and instructions for completing those forms are included in the "Forms and Samples" section at the end of this document.

Also prior to Milestone 6, a project proponent must provide proof that the project is not associated with an existing facility or proof of separate metering, if it is associated with an existing facility. Projects that are associated with an existing facility must be a separable improvement or enhancement and must be separately metered to prevent energy from an existing facility from receiving payments from the New Renewable Resources Account. Project proponents whose projects are not associated with an existing facility should provide proof of non-association. In the case that the energy produced by a project is sold to two different, eligible customers, there is no requirement that the electricity transmitted to the two parties be separately metered if the project involved is not associated with an existing facility as a separable improvement or enhancement.

As proof of on-line operation, winning bidders shall be expected to submit the Engineering Certificate included in the "Forms and Samples" section at the end of this document. This certificate must be completed and executed by a professional engineer, registered to practice in the State of California and having substantial experience in the design, construction and operation of electric power plants of the same type as the winning bidder's project. The certificate must be based on the engineer's inspection of the facility and its operating records and must verify that the facility is in good operating condition, is operating at or within 15 percent of the facility's design capacity (as specified in the winning bidder's bid and PAP), and that the facility is using no more than 25 percent fossil fuel to satisfy its total fuel input needs, as determined on a total energy input basis. As stated in the Engineering Certificate Form, the certifying engineer must have no economic relationship to the entity or entities that designed or constructed the project or project facilities. However, the engineer may be employed by the project itself.

All projects are expected to reach Milestone 6, or come on-line, prior to January 1, 2002. This on-line date requirement is based on the version of Public Utilities Code section 383.5(c)(2)(B) existing at the time the June 1998 auction was held. However, in September of 2000, Governor Davis signed Assembly Bill 995 into law, which amended section 383.5(c)(2)(B) by adding the following language: "Funds expended for production incentives [from the New Renewable Resources Account] shall be paid over a five-year period commencing on the date that a project begins electricity production, provided that the project shall be operational prior to January 1, 2002, unless the State Energy Resources Conservation and Development Commission finds that the project will not be operational prior to January 1, 2002, **due to circumstances beyond the control of the developer**. Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a

project begins electricity production may not extend beyond January 1, 2007.” [emphasis added].

Pursuant to this amendment to section 383.5(c)(2)(B), winning projects under the June 1998 auction that were unable to pass Milestone 6 by December 31, 2001, because of circumstances beyond the developer’s control may petition the Committee for an extension of their funding awards in the manner specified in the Commission’s *Overall Guidelines for the Renewable Resource Trust Fund*.

After A Project Comes On-line

All projects are expected to come on-line prior to January 1, 2002. Any project failing to come on-line before this date may still be eligible to receive monthly payments, but will receive no payments for any generation beyond December 31, 2006, five years from the expected on-line date. In addition, the Commission will determine whether the project should have its incentive payments reduced or canceled, or whether any other penalties should be imposed on the project, as a result of the delayed on-line date.

To receive incentive payments, on-line projects must submit monthly invoices identifying the amount of eligible electricity generated from the project.¹⁵ The monthly invoice shall consist of a completed and properly executed CEC-1890B-3 form, a copy of which is included with this guidebook, or its replacement at the time, together with an attached invoice or written statement of an independent third party verifying the amount of qualifying electricity generation sold to each eligible entity during a given billing month. The third party may be a utility, the Independent System Operator created pursuant to section 330 of the Public Utilities Code, an aggregator, or other similar entity which is independent of the project and gathers data on the amount of qualifying electricity production supplied by the project to eligible entities via the transmission grid or distribution system on a monthly basis for which funding is sought. If the independent third party’s statement is not received in time to submit it with your invoice, the project proponent is expected to submit the invoice with other evidence of the amount of eligible electricity generated during the billing month. A letter explaining why the third party’s statement could not be submitted and describing the evidence submitted in its place must also be submitted with the invoice. The Commission’s Accounting Office will evaluate these invoices on a case-by-case basis and notify the project proponent whether the amount claimed in the invoice, or any part of it, will be accepted and paid upon. The Commission’s Accounting Office may elect to pay only that portion of the amount invoiced which appears to be reasonable given the evidence submitted in support of the invoice, the prior months’ generation, and other factors deemed pertinent at the time of evaluation. Subsequently, when the third party statement is available, it must be furnished to the Commission’s Accounting Office and payment adjustments will be made for any differences in the estimated eligible generation and actual eligible

¹⁵A project that has 25% or less of its electricity generated from fossil fuel meets the definition of renewable under state law for this program, and the entire output of the facility is therefore considered renewable.